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## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Part 9**

**[Docket No. TTB–2015–0011; T.D. TTB–139; Ref: Notice No. 155]**

**RIN: 1513–AC22**

### **Establishment of the Tip of the Mitt Viticultural Area**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 2,760-square mile “Tip of the Mitt” viticultural area in all or portions of Charlevoix, Emmet, Cheboygan, Presque Isle, Alpena, and Antrim Counties in Michigan. The viticultural area is not located within, nor does it contain, any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

## **SUPPLEMENTARY INFORMATION:**

### **Background on Viticultural Areas**

#### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary of the Treasury has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

#### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

#### Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;

- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

### **Tip of the Mitt Petition**

TTB received a petition from the Straits Area Grape Growers Association, on behalf of winery and vineyard owners in the northern portion of Michigan's Lower Peninsula, proposing the establishment of the "Tip of the Mitt" AVA. The proposed AVA contains approximately 2,760 square miles, and there are 41 commercially-producing vineyards covering a total of 94 acres distributed throughout the proposed AVA, along with 8 wineries. According to the petition, an additional 48 acres of vineyards and 4 new wineries are planned for the near future. The proposed Tip of the Mitt AVA is not located within any established AVA. According to the petition, the distinguishing features of the proposed Tip of the Mitt AVA include its climate and soils.

The proposed AVA is bordered by Grand Traverse Bay, Little Traverse Bay, and Lake Michigan to the west; the Straits of Mackinac to the north; and Lake Huron to the east. The presence of large bodies of water on three sides of

the proposed AVA has a moderating effect on the climate, providing slightly warmer annual high temperatures than are found south of the proposed AVA. The proposed Tip of the Mitt AVA also has fewer days with high temperatures below both 0 and 32 degrees Fahrenheit than the region to the south, meaning that temperatures do not drop low enough to cause severe damage to cold-hardy grape varieties such as Marechal Foch and Leon Millot. The proposed AVA also has a longer growing season and higher growing degree day accumulations than the region to the south, providing ample time for mid-to-late season grape varieties such as Frontenac to ripen.

With respect to soils, the proposed Tip of the Mitt AVA predominately contains coarse-textured glacial till and Lacustrine sand and gravel. Soils that contain either glacial outwash sand or ice-contact sand and gravel are present only in small amounts within the proposed AVA and are more common in the region to the south. The soils within the proposed AVA have high levels of organic matter, which prevents nutrients from leaching rapidly. The soils also have high water-holding capacities, so vineyard owners take steps to reduce moisture accumulation, such as planting cover crops between rows to absorb excess water. By contrast, the soils in the region south of the proposed AVA have lower levels of organic matter and lower water-holding capacities. Finally, the soils within the proposed AVA do not heat as quickly in the spring as soils that contain high levels of sand and gravel, so bud-break is naturally delayed until the risk of late spring frosts has passed.

#### **Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 155 in the **Federal Register** on August 6, 2015 (80 FR 46883), proposing to establish the Tip of the Mitt AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the features of the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 155.

In Notice No. 155, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on October 5, 2015. TTB received 14 comments in response to Notice No. 155. All 14 commenters supported the establishment of the proposed AVA. Commenters included self-identified local winery and vineyard owners and operators; members of the Straits Area Grape Growers Association; the Corporate and Community Education Training Coordinator for North Central Michigan College in Petoskey, MI; an Agricultural Innovation Counselor with Michigan State University's Product Center; and several individuals who did not describe any affiliation with the wine industry. Many of the commenters stated that the region's climate and the ability to grow a variety of cold-hardy grape varieties distinguish the proposed AVA from the region to the south. Several of the commenters supported the proposed AVA as a way to

showcase the region's wines and promote tourism to the region. TTB did not receive any comments opposing the establishment of the proposed AVA.

#### Proposed Name Change

One commenter (comment 6) supported the establishment of the proposed AVA but did not support the proposed name. The commenter stated that he believed "Tip of the Mitt" was a "whimsical" name that is "Michigan slang" and "doesn't provide the public with an accurate geographical description" of where the proposed AVA is located. The commenter suggested "The Straits" or "Little Traverse" as alternate names for the proposed AVA, but did not provide any evidence to support the alternative AVA names.

Section 9.12(a)(1) of TTB regulations requires, among other things, that:

(1) A proposed AVA name be currently and directly associated with an area in which viticulture exists; (2) the proposed name apply to all of the area within the proposed AVA; and (3) the region of the proposed AVA be known nationally or locally by the proposed name. Although "Little Traverse" and "The Straits" both refer to geographical features within the proposed AVA, the commenter did not provide evidence to show that the entire region of the proposed AVA is known locally or nationally by either of those names. Additionally, "The Straits" could apply to any of the numerous straits in the United States and is therefore unsuitable as an AVA name without a geographical modifier. Therefore, TTB does not believe that either "Little Traverse" or "The Straits" meets the regulatory requirements for an AVA name.

TTB believes that the petition to establish the Tip of the Mitt AVA provided sufficient evidence to demonstrate that the name “Tip of the Mitt” is widely used throughout the proposed AVA to describe the region. The petition included names of local businesses and organizations and regional events that use the phrase in their names. Therefore, TTB has determined that “Tip of the Mitt” meets the regulatory requirements for an AVA name as set forth in § 9.12(a).

### **TTB Determination**

After careful review of the petition and the comments received, TTB finds that the evidence provided by the petitioner supports the establishment of the Tip of the Mitt AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the “Tip of the Mitt” AVA in the northern portion of Michigan’s Lower Peninsula, effective 30 days from the publication date of this document.

### **Boundary Description**

See the narrative description of the boundary of the AVA in the regulatory text published at the end of this final rule.

### **Maps**

The petitioner provided the required maps, and they are listed below in the regulatory text.



## **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, “Tip of the Mitt,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name “Tip of the Mitt” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Tip of the Mitt AVA will not affect any existing AVA. The establishment of the Tip of the Mitt AVA will allow vintners to use “Tip

of the Mitt” as an appellation of origin for wines made primarily from grapes grown within the Tip of the Mitt AVA if the wines meet the eligibility requirements for the appellation.

### **Regulatory Flexibility Act**

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

### **Executive Order 12866**

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

### **Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

### **List of Subjects in 27 CFR Part 9**

Wine.

### **The Regulatory Amendment**

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

## **PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### **Subpart C—Approved American Viticultural Areas**

2. Subpart C is amended by adding § 9.257 to read as follows:

#### **§ 9.257 Tip of the Mitt.**

(a) Name. The name of the viticultural area described in this section is “Tip of the Mitt”. For purposes of part 4 of this chapter, “Tip of the Mitt” is a term of viticultural significance.

(b) Approved maps. The 2 United States Geological Survey (USGS) 1:250,000 scale topographic maps used to determine the boundary of the Tip of the Mitt viticultural area are titled:

- (1) Cheboygan, Michigan, 1955; revised 1981; and
- (2) Alpena, Mich., US–Ontario, Can.; 1954.

(c) Boundary. The Tip of the Mitt viticultural area is located in all or portions of Charlevoix, Emmet, Cheboygan, Presque Isle, Alpena, and Antrim Counties in Michigan. The boundary of the Tip of the Mitt viticultural area is as described below:

(1) The beginning point is on the Cheboygan map, at the point where the Mackinac Bridge intersects the southern shoreline of the Straits of Mackinac. From the beginning point, proceed east-southeasterly along the shoreline of the South Channel of the Straits of Mackinac and Lake Huron, crossing onto the Alpena map and continuing to follow the Lake Huron shoreline and then the

Thunder Bay shoreline to the point where the Thunder Bay shoreline intersects the common T31N/T30N township line south of the city of Alpena and north of Bare Point; then

(2) Proceed northwesterly in a straight line to the intersection of an unnamed medium-duty road known locally as Long Rapids Road and an unnamed light-duty road known locally as Cathro Road; then

(3) Proceed west in a straight line to the line's intersection with State Highway 65 and an unnamed light-duty road known locally as Hibner Road; then

(4) Proceed northwesterly in a straight line to the intersection of the Presque Isle, Alpena, and Montmorency county lines; then

(5) Proceed west along the southern boundary of Presque Isle County, crossing onto the Cheboygan map, to the point where the Presque Isle county line becomes the southern boundary of Cheboygan County, and continuing along the Cheboygan county line to the intersection of the Cheboygan county line with the eastern boundary of Charlevoix County; then

(6) Proceed south then east along the Charlevoix county line to the intersection of the Charlevoix county line with the eastern boundary of Antrim County; then

(7) Proceed south along the Antrim county line to the point where the county line turns due east; then

(8) Proceed west in a straight line to the eastern shoreline of Grand Traverse Bay; then

(9) Proceed north-northeasterly along the shorelines of Grand Traverse Bay, Lake Michigan, Little Traverse Bay, Sturgeon Bay, Trails End Bay, and the Straits of Mackinac, returning to the beginning point.

Signed: June 29, 2016.

**John J. Manfreda,**

Administrator.

Approved: July 10, 2016.

**Timothy E. Skud,**

Deputy Assistant Secretary  
(Tax, Trade, and Tariff Policy).

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